AZMI MOHAMAD AZAM v. DIRECTOR OF JABATAN AGAMA ISLAM SARAWAK & ORS

HIGH COURT SABAH & SARAWAK, KUCHING
YEW JEN KIE J
[JUDICIAL REVIEW NO: KCH-25-7-12-2014]
24 MARCH 2016

ADMINISTRATIVE LAW: *Remedies – Mandamus – Applicant left Islam and embraced Christianity – Applicant applied to change name on identity card – Director-General of National Registration Malaysia informed applicant that letter of release from Islam and court order were required – Application for order of mandamus to compel respondents to issue letter of release from religion of Islam – Applicant and respondents entered into consent order agreeing to issue letter of no objection to applicant to come out of Islam – Whether Director-General of National Registration Malaysia had basis to insist on court order to effect amendment in applicant's identity card*

CIVIL PROCEDURE: *Jurisdiction – Syariah Court – Applicant left Islam and embraced Christianity and sought to change name on identity card – Director-General of National Registration Malaysia informed applicant that letter of release from Islam and court order were required – Applicant applied for order of mandamus to compel respondents to issue letter of release from religion of Islam – Applicant and respondents entered into consent order agreeing to issue letter of no objection to applicant to come out of Islam – Director-General of National Registration Malaysia still insisted on letter of release from Islam and court order – Whether Syariah Court has jurisdiction to deal with apostasy matters – Whether Syariah Court has jurisdiction to issue certificate of release from Islam*

WORDS & PHRASES: *'Professing' – Item 1 of List II of Ninth Schedule of Federal Constitution – Applicant left Islam and embraced Christianity – Applicant required to produce letter of release from Islam and court order – Jurisdiction of Syariah Court over persons 'professing' religion of Islam – Whether applicant could be considered 'professing' faith in Islam – Whether Syariah Court has jurisdiction to issue such order*

The applicant had left the religion of Islam and embraced Christianity. According to the applicant, the choice of Islam was decided for him when he was ten years old by his parents following their own conversion to Islam but since birth, the applicant was raised and brought up in the Bidayuh Christian community. The applicant went to the Director-General of National Registration Malaysia's ('the third respondent') office to change his name on his identity card but was informed that a letter of release from Islam ('the letter') and a court order were required. Hence, the present application. The applicant applied for (i) a declaration that he is a Christian; (ii) an order of *mandamus* to compel the first and/or second respondents to issue the letter;

A (iii) an order of *mandamus* to compel the third respondent to change the applicant's name from 'Azmi b Mohamed Azam Shah @ Rooney' to 'Roneey anak Rebit'; and (iv) an order of *mandamus* to compel the third respondent to drop the applicant's religion of Islam in his identity card and/or the records and/or particulars of the applicant's religion held at the National B Registry to that of Christianity. In a consent order entered, the first, second and fourth respondents agreed to issue letter of no objection to the applicant to come out of Islam. However, the third respondent still insisted on the letter and a court order. The applicant was informed by the Ketua Hakim Syarie of Jabatan Kehakiman Syariah Sarawak that the Syariah Courts in C Sarawak do not have the jurisdiction to issue the letter. Premised on the information obtained from the Ketua Hakim Syarie, the applicant argued that the third respondent had no basis to insist on a Syariah Court order to effect the amendment in the applicant's identity card.

Held (allowing application):

D **(1)** The Syariah Court Ordinance 2001 does not clothe the Syariah Courts with dealing with apostasy matters and this was confirmed by the Ketua Hakim Syarie. The Majlis Agama Islam Sarawak Ordinance 2001 also did not make any provision in respect of matters relating to apostasy or conversion out of Islam. Notwithstanding that there is no provision in E the State Enactment pertaining jurisdiction to deal with apostasy matters, based on the authorities, it could be implied that the Syariah Court has such jurisdiction to deal and determine such matters. However, the applicant did not need a Syariah Court order to release him from Islam because the right to choose his religion lies with the F applicant himself and not the religious body. The exercise of constitutional religious freedom is out of bound/jurisdiction of a Syariah Court and the applicant could approach the civil court for a declaration that he is a Christian. (paras 19, 20 & 38)

(2) Under Item 1 of List II of the Ninth Schedule of the Federal G Constitution, the Syariah Court shall have jurisdiction only over persons 'professing' the religion of Islam. 'Professing' a religion is making a public statement about the religion you believe in. Thus, a person professing to Islam is a person who has made a public declaration, affirmed his faith in or his allegiance to Islam. Since the applicant had H not professed his faith in Islam, he could not be considered as a person professing that particular faith. The applicant not living like a person professing Islam was seen in his averment that he was raised and brought up in the Bidayuh Christian community. (paras 40, 41, 44 & 45)

(3) By reason that the applicant's conversion was not based on his professing I Islam but by virtue of his mother's conversion and his mother's choice for him, now that the applicant is a major, he is at liberty not only to exercise his constitutional religious right to choose his religion but he

could also come to the courts to enforce his choice to be reflected in his identity card *ie*, his name and religion. The third respondent had not acted fairly towards the applicant by insisting on the letter and a court order to effect the amendments applied for by the applicant. (paras 46 & 47)

Case(s) referred to:

Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mentajam & Anor [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 SC ***(refd)***

Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal [2014] 4 CLJ 253 FC ***(refd)***

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC ***(refd)***

Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors [2003] 3 CLJ 289 FC ***(refd)***

Md Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur [1997] 4 CLJ Supp 419 HC ***(refd)***

Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals [2016] 1 CLJ 911 CA ***(refd)***

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 FC ***(refd)***

Teoh Eng Huat v. The Kadhi of Pasir Mas, Kelantan & Anor [1990] 2 CLJ 11; [1990] 1 CLJ (Rep) 277 SC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 11(1), 74(2), 121(1)
Majlis Islam Sarawak Ordinance 2001, ss. 68, 69, 70(1)
Rules of Court 2012, O. 53 rr. 2, 3

Other source(s) referred to:

Words And Phrases Judicially Defined, 1990 edn, p 447

For the applicant - Chua Kuan Ching, Simon Siah & Cindy Chow; M/s Simon Siah, Chua & Chow Advocs

For the 1st, 2nd & 4th respondents - Hisyamudin Roslan; State Legal Officer, AG's Chambers, Kuching

For the 3rd respondent - Leo Saga; SFC & Sandra Kho; FC

Reported by Najib Tamby

JUDGMENT

Yew Jen Kie J:

[1] The applicant applied for the following relief:

(a) a declaration that the applicant is a Christian.

(b) an order of *mandamus* to compel the first and/or second respondents to issue the letter of release from the religion of Islam ("surat murtad") to the applicant effecting the applicant's intention to be released from the religion of Islam.

(c) an order of *mandamus* to compel the third respondent to change the applicant's name from Azmi b Mohamad Azam Shah @ Roneey to Roneey anak Rebit.

(d) an order of *mandamus* to compel the third respondent to drop the applicant's religion Islam in his identity card and/or the records and/or particulars of the applicant's religion held at the National Registry to that of Christianity.

(e) costs.

(f) any further or other relief deems fit and proper by this Honourable Court.

[2] The application for leave to file judicial review was made *ex parte* but it was heard *inter parte*.

The Facts

[3] In the affidavit in support affirmed on 8 December 2014 to support the application for leave under O. 53 rr. 2 & 3 of the Rules of Court 2012, the applicant deposed that his parents are Bidayuh by race and Christian by religion. However, both his parents embraced Islam in or about 1983 when his father, a soldier, was serving in Kuala Lumpur. Upon conversion, his father Rebit anak Ngaei was given the name of Mohamad Azam Shah bin Abdullah while his mother Molen anak Sangok was given the name of Faezah binti Abdullah. The applicant averred that he was eight years old (in fact, ten years old based on his mother's Conversion Certificate exh. RR-7) at the time of his parents' conversion and by virtue of his parents' conversion, he was given the name Azmi bin Mohamad Azam @ Roneey. See, Keterangan Masuk Islam of Mohamad Azam Shah bin Abdullah registered with Majlis Islam Sarawak and Keterangan Masuk Islam of Faezah binti Abdullah registered with Mufti Negeri Sarawak marked exh. RR-6 and exh. RR-7 respectively.

[4] The applicant deposed that since birth he was raised and brought up in the Bidayuh Christian community and on his own volition he had left the religion of Islam and embraced Christianity. On 4 September 1999, he was baptised in Sidang Injil Borneo (SIB) Sarawak at Bunuk as evidenced by the baptism certificate marked exh. RR-3.

[5] Thereafter on 15 July 2014, the applicant went to the third respondent's office in Limbang for the purpose of applying for change of name in his identity card but was informed that a letter of release from Islam and a court order are required to effect the change.

[6] Thereupon, the applicant approached the Jabatan Agama Islam, Limbang Branch and was duly informed that Jabatan Agama Islam, Limbang branch cannot help and was advised to apply to the court. Hence the present application.

[7] I have on 17 December 2015 granted leave to the applicant to file judicial review. A

[8] It is worth mentioning that on 12 June 2015, a consent order was entered between the applicant and the first, second and fourth respondents in the following terms: B

> The 1st, 2nd and 4th Respondents to issue letter of no objection to the applicant to come out of Islam and the copy of the same to be forwarded to the Applicant's counsel.

[9] However, the third respondent insisted on a letter of release from Islam and a court order for the purpose of processing the applicant's application to change his name and the religion status in his identity card. C

[10] The applicant's counsel was informed *vide* a letter dated 10 March 2015 issued by the Ketua Hakim Syarie of Jabatan Kehakiman Syariah Sarawak to Messrs Francis Teron Kedap stating that the Syariah Courts in Sarawak have no jurisdiction to issue the certificate of release from Islam religion. (See affidavit in support no. 3 (encl. 18) and exh. RR-8 annexed thereto). D

[11] The applicant's counsel thereupon wrote to Ketua Hakim Syarie of Jabatan Kehakiman Syariah Sarawak seeking confirmation of the contents of exh. RR-8. (See exh. RR-9 annexed to encl. 18). E

[12] The Ketua Hakim Syarie, Jabatan Kehakiman Syariah Sarawak confirmed in its letter dated 7 July 2015 that the Syariah Courts in Sarawak indeed has no jurisdiction to issue the certificate of release from Islam religion. (See exh. RR-10 annexed to encl. 18). F

[13] Premised on the above confirmation in exh. RR-10 that Syariah Courts in Sarawak are not clothed with the jurisdiction to issue the certificate of release from Islam religion, learned counsel for the applicant contended that the third defendant has no basis to insist on a Syariah Court order to effect the amendment in the applicant's identity card. G

[14] Learned Senior Federal Counsel submitted that the first and second respondents are not Syariah Courts and although they have no objection to issue a letter of no objection to the applicant to leave Islam religion, it does not preclude the third respondent from insisting on a certificate of release from Islam religion from the Syariah Court. H

[15] Learned Senior Federal Counsel further contended that even though the Syariah Court Ordinance 2001 applicable to the Syariah Courts in Sarawak have no provision conferring jurisdiction to Syariah Court to determine the issue of apostasy, there is, by implication, such jurisdiction to hear apostasy cases. In other words, the absence of statutory power would not make the Syariah Court powerless in dealing with apostasy issue. I

[16] To support the above contention, learned Senior Federal Counsel cited the following cases:

(i) *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mentajam & Anor* [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 (SC). Even though there was no provision on the conversion out of Islam in the Kedah Enactment, Mohamed Yusoff SCJ, in a separate judgement, stressed that the determination of the question in issue, that is, whether a person was a Muslim or had renounced Islam before death require consideration by relevant jurists qualified in the field of Islamic law. His Lordship (as he then was) stated:

> The present question, in my view, cannot be determined by a simple application of facts as has been found by the learned judicial commissioner on the basis of veracity and relevancy of evidence according to civil law. Such a serious issue would, to my mind, need consideration by eminent jurists who are properly qualified in the field of Islamic jurisprudence.
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> On this view, it is imperative that the determination of the question in issue requires substantial consideration of the Islamic law by relevant jurists qualified to do so. The only forum qualified to do so is the syariah court.

(ii) *Md Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur* [1997] 4 CLJ Supp 419; [1998] 1 MLJ 681 (HC). A preliminary issue arose on the jurisdiction of the High Court to adjudicate on the matter where the plaintiff sought declaration from the High Court that his renunciation of Islam by a deed poll was in accordance with the law and valid and that he was not required to obtain the consent of MAIWP to renounce the religion of Islam.

Abdul Kadir Sulaiman J (as he then was) held that by virtue of para. 1 of the State List in the Ninth Schedule to the Constitution, the jurisdiction lies with the Syariah Courts on its wider jurisdiction over a person professing the religion of Islam even if no express provisions were provided in the Administration of Islamic Law (Federal Territories) Act 1993 because, under art. 74 of the Constitution, it was within the competency of the State Legislature to legislate on the matter. The fact that the Legislature has not yet done so would not detract the contemplation of para. 1 of the State List. Therefore, when the matters are in issue, Syariah Courts are clothed with the jurisdiction and not the court mentioned in art. 121(1), notwithstanding the absence of the express provisions in the State Enactment at the time the issues arise.

(iii) *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5; [1999] 1 MLJ 489. At the Supreme Court, one of the issues raised was that since there was no express

provision in the Kedah Administration of Muslim Law Enactment 1962 conferring jurisdiction on the Syariah Courts, the High Court has jurisdiction to hear the application. The Supreme Court held: A

> We hasten to add that both the learned judge in the instant case and Abdul Kadir Sulaiman J in *Md Hakim Lee*, for different reasons, also had recourse to a construction by implication to found the jurisdiction of the syariah court to deal with the question of conversion out of Islam. Abdul Kadir Sulaiman J, in particular, adopted a liberal interpretation of the Wilayah Act. On the other hand, Abdul Hamid J in *Lim Chan Seng* applied a strict interpretation by confining the meaning of the word 'jurisdiction' to the express jurisdiction of the syariah courts enacted in the State Enactments, where in that case he found no express provisions in the Penang State Enactment. Whilst we agree with the approach adopted by Abdul Hamid J following *Habibullah*, that when there is a challenge to jurisdiction the correct approach is to look at the State Enactments to see whether or not the syariah courts have been expressly conferred jurisdiction on a given matter, with respect, we do not agree with His Lordship's conclusion that since the Penang Enactment did not expressly confer jurisdiction on the syariah court over the matter raised, there was no impediment for the civil court to hear and dispose of the matter. B C D

In applying the construction by implication, the Supreme Court went on to hold: E

> ... in our opinion, the jurisdiction of the syariah courts to deal with the conversion out of Islam, although not expressly provided in the State Enactment, can be read into them by implication derived from the provisions concerning conversion into Islam. F

(iv) *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffily Shaik Natar & Ors* [2003] 3 CLJ 289; [2003] 3 MLJ 705, the Federal Court approved the *ratio* in Md Hakim Lee and Soon Singh, *supra*, where it uttered: G

> We respectfully agree with this approach. But what happens in a situation where there is no expression provision at all in the State Enactment giving jurisdiction to the syariah court on any particular subject matter but the subject matter is within the competence of the state legislature to enact, that is to say, in particular para 1 of the Second List (State List) in the Ninth Schedule to the Constitution under the caption 'Legislative Lists'? H
>
> In *Soon Singh* there is an express provision on the conversion to Islam but not on renunciation of Islam and hence the implication approach. The answer, in our view, is provided by Abdul Kadir Sulaiman J (as he then was) in *Md Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1998] 1 MLJ 681. Though, in *Md Hakim Lee* the learned judge took a wider approach in I

A interpretating the issue of jurisdiction, by reference to para. 1 of the Second List called the State List read with art. 74 of the Constitution when the issue of art. 121(1A) of the Constitution before his Lordship was in respect of the Administration of Islamic Law (Federal Territories) Act 1993 (a Federal Legislation), the wider approach taken by His Lordship equally applied to the Pulau B Pinang Enactment.

(v) *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 3 CLJ 557; [2007] 4 MLJ 585 (FC), where the majority judgment held:

C [7] [Oleh Ahmad Fairuz Ketua Hakim Negara, Alauddin HMP bersetuju] Kes *Soon Singh* ketara menunjukkan bahawa hal murtad adalah dalam bidang kuasa Mahkamah Syariah. Item 1, Senarai 2, Jadual 9 Perlembagaan Persekutuan menunjukkan bahawa "Islamic Law" adalah salah satu daripada "matters" yang terdapat dalam item 1 dan apabila dibaca pula berlatarbelakangkan kes *Dalip Kaur*, maka amat ketara sekali bahawa sesungguhnya perkara D murtad itu adalah perkara yang berhubung kait dengan undang-undang Islam (Islamic Law) dan nyatalah oleh itu ianya adalah di dalam bidang kuasa Mahkamah Syariah dan kerana perkara 121 (1A) Perlembagaan Persekutuan, maka mahkamah-mahkamah sivil tidak boleh campur tangan dalam hal itu (lihat perenggan 16).

E (vi) In *Hj Raimi Abdullah v. Siti Hasnah Vangarama Abdullah & Another Appeal* [2014] 4 CLJ 253; [2014] 3 MLJ 757, the Federal Court held:

[21] Thus, in *James v. Government of Malaysia* [2012] 1 MLJ 721 and *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585, it was held that apostasy was a matter within the exclusive jurisdiction of the Shariah Court. F

[22] Premised on the above authorities, it is settled law that the question of whether a person is a Muslim or not is a matter falling under the exclusive jurisdiction of the Shariah Court. On the facts in the present case, it is not in dispute that the plaintiff's parents converted to Islam in 1983 together with the plaintiff and her G siblings. This is supported by the statutory declaration of the late father referred to earlier.

[17] Learned counsel for the applicant submitted that the *Soon Singh* case should be distinguished from the present case as the decision in *Soon Singh* case was with regard to Kedah State laws and is only applicable to the State H of Kedah. Every state has its own laws relating to Islam religion.

[18] With respect, I do not agree. While each state has its own law relating to Islam religion, as rightly submitted by learned Senior Federal Counsel, Islam religion is practised throughout the country and that apostasy matters must be determined according to the Islamic teaching or Islamic law I applicable to all persons professing the Islam religion. For this reason, the rationale of *Soon Singh* case applies to all states in Malaysia and not just confined to the State of Kedah.

[19] It is a fact that the Syariah Court Ordinance 2001 does not clothe the Syariah Courts with dealing apostasy matters and this is confirmed by the Ketua Hakim Syarie, Jabatan Kehakiman Syariah Sarawak as per the letter exh. RR-10 annexed to encl. 18. The Majlis Islam Sarawak Ordinance 2001 also did not make any provision in respect of matters relating to apostasy or conversion out of Islam religion. Sections 68 and 69 thereof provides for requirement for and effect of conversion to the religion of Islam and the capacity to convert into the said religion. Section 70(1) of the same Ordinance provides for the appointment of Registrar of Muslim Converts whose duty is to maintain a register and issue certification cards to Muslim converts.

[20] Notwithstanding that there is no provision in the State Enactment pertaining to jurisdiction to deal with apostasy matters, on the high authorities referred to above, it can be implied that Syariah Courts have such jurisdiction to deal and determine such matters.

[21] Having stated the position of law as I understand it, it is my considered view that the matter before the court is not one of jurisdictional issue but rather it is constitutional in nature. My reasons are as below.

[22] Foremost, it is pertinent to distinguish the facts of the above cited cases from the present case.

[23] In *Dalip Kaur* case, *supra*, the deceased was born a Sikh and brought up in Sikh faith. He converted to Islam on 1 June 1991 to marry a Muslim girl. On 9 September 1991 the deceased had by a deed poll renounced the Islamic faith and resumed the practice of the Sikh faith. The deceased passed away before the wedding which was supposed to be held on 25 November 1991. The appellant had applied for a declaration that her deceased son at the time of his death on 3 October 1991 was not a Muslim and/or had renounced the Islam faith and for the consequential declaration that she was entitled to the body of the deceased.

[24] In *Soon Singh*, *supra*, the appellant was a Sikh by birth and brought up embracing Sikh faith. He converted to Islam without the knowledge and consent of his widowed mother while he was still a minor. Upon reaching 21 years of age, he was baptised according to the Sikh faith, thereby renouncing Islam. He then executed a deed poll in which he declared unequivocally that he was a Sikh. Subsequently, he filed an originating summons in High Court seeking a declaration that he was no longer a Muslim. At the Federal Court, the appellant contended, among others, that the appellant's conversion to Islam while a minor and without the knowledge of his mother was invalid, citing *Teoh Eng Huat v. The Kadhi of Pasir Mas, Kelantan & Anor* [1990] 2 CLJ 11; [1990] 1 CLJ (Rep) 277; [1990] 2 MLJ 300 (SC). As such, the applicable law in this case is the civil law before his purported conversion.

[25] The Federal Court in *Soon Singh* case held that the question of whether the applicant's conversion to Islam while a minor was valid or not is not a relevant issue in the appeal. The court was to decide on the jurisdictional question of which court a Muslim convert can apply for a declaration that he had converted out of Islam. The Federal Court found that the appellant's conversion to Islam was voluntary as they noted "… that four years had elapsed between the time of the appellant's conversion to Islam (at the age of 17 years and four months) and the time of his purported reconversion to Sikhism (21 years six months old). Throughout this period of about four years, he remained a Muslim and practised the religion of Islam and continued even after he attained majority. There is no evidence that he ever challenged his conversion to Islam after he reached 18 years of age. In the circumstances, these factors amply justify the conclusion that the appellant's conversion to Islam was made voluntarily".

[26] In *Lina Joy* case, *supra*, the appellant was a Malay woman brought up as a Muslim. She applied for the removal of "Islam" and her name "Azlina bte Jailani" to "Lina Joy" in her replacement identity card, which application was considered incomplete without an order of the Syariah Court stating that she has renounced Islam.

[27] It is to be noted that the applicant in the present case is a Bidayuh by race and had been raised and brought up in a Christian Bidayuh community since birth. The choice of Islam religion was decided for him by his parents following their own conversion to Islamic faith as he was ten years old. He has never practised the Islamic faith and has embraced Christianity. He is not challenging the validity of his minor conversion. In exercise of the constitutional religion freedom, he is seeking a declaration that he is a Christian.

[28] At this juncture, it is helpful to look at the rights of religion of a minor. In *Teoh Eng Huat*, *supra*, the plaintiff's daughter, a minor was converted to Muslim. The plaintiff sought a declaration that the plaintiff, as guardian and father, had the right to decide her religion, education and upbringing. The Supreme Court held:

> Stripped of technical hair splitting or purely academic arguments, it is our view that under normal circumstances, a parent or guardian (non-Muslim) has the right to decide the choice of various issues affecting an infant's life until he reaches the age of majority. Our view is fortified by the provisions of Guardianship of Infants Act 1961, which incorporates the rights, and liabilities of infants and regulates the relationship between infants and parents. We do not find favour with the learned Judge's view that the rights relating to religion is not covered by the Act on ground that the word "religion" is not clearly spelt out in the law. In our view religious practice is one of the rights of the infant, exercised by the guardian on his behalf until he becomes a major.

[29] It should be noted that although the Supreme Court in *Teoh Eng Huat* case, *supra*, was of the view that the plaintiff would have been entitled to the declaration he had asked for, however, they declined to make such declaration as the subject is no longer an infant.

[30] In *Hj Raimi Abdullah*, *supra*, the respondent's father (the plaintiff) had converted to Islam together with his wife and five children, including the plaintiff, who was then one year and three months old in 1983. In 2009, the plaintiff commenced an action against the defendants in the High Court, *inter alia*, for declarations and orders that the defendants had wrongfully and unlawfully subjected the plaintiff to undergo a religious conversion process at the age of seven years old; the Sijil Akuan Masuk Islam dated 28 December 1989 executed by the plaintiff was ineffective, null and void *ab initio*, and that the Director General of the National Registration Department be ordered and directed to immediately take all the necessary actions to rectify its record pertaining to the plaintiff, by reinstating the plaintiff's original Indian name in the plaintiff's identity card and to delete the word 'Islam'.

[31] The Federal Court held:

> (2) The plaintiff's parents converted to Islam in 1983 together with the plaintiff and her siblings and this was supported by the statutory declaration of the late father. The religion of a minor was determined by the parent or guardian as found in the provisions of art 12(3) and (4) of the Constitution read together with provisions of the Guardianship of Infants Act 1961. There, the father had the right in 1983 to determine the religion of the plaintiff as she was then minor, aged one year and three months. (see paras 22-23).

[32] From my understanding of the above high authorities, the right of a minor to religious practice is decided by his/her lawful parent or guardian until he becomes a major. My understanding is fortified by a recent case of *Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals* [2016] 1 CLJ 911. In that case, the appellant and the respondent were married in 1993 under the Law Reform (Marriage and Divorce) Act 1976. In 2009, the appellant converted to Islam and successfully applied to Jabatan Agama Islam, Perak to also convert their three children, aged 12 years, 11 years and 11 months respectively. He was also, upon application, granted a permanent custody of the three children by the Syariah Court. The respondent's judicial review was allowed by the High Court which, among others, quashed the conversion. The appellant appealed. At the time when the hearing of the appeal came before the Court of Appeal, the eldest child had become a major. The Court of Appeal agreed with the submission of learned counsel for the respondent that the issue of the conversion of the eldest child has become academic as being an adult, she has her own right to decide her religion, citing *Teoh Eng Huat* case, *supra*. Hence, no order was made in respect of her conversion to Islam.

[33] It should be noted that in *Hj Raimi* case, *supra*, the Federal Court did not consider the right of the appellant who has become a major and therefore has the right to choose her own religion. Instead, the Federal Court held:

> (3) Although the learned High Court Judge had rightly struck out the plaintiff's application, the judge had erred in holding that the plaintiff was already a Muslim in 1989 because of the conversion which was alleged to have taken place in 1983. The matter of conversion of the plaintiff together with her father in 1983 ought to be determined first by the syariah court before the issue of the alleged conversion in 1989 could be appropriately determined by the civil court. Therefore, the High Court judge had pre-judged the issue of the plaintiff's conversion when it was not for the judge to determine the validity of the conversion in 1983.

[34] It should be noted that the Federal Court in *Hj Raimi* case, *supra*, opined that in determining the validity and legality of the religion conversion process to Islam in 1989, it is necessary to first consider whether her conversion to Islam by her late father in 1983 was lawful, valid and effective. This raised the question of which court - Syariah Court or civil courts - has the jurisdiction to determine this issue. Hence, it held "the matter of conversion of the plaintiff together with her father in 1983 ought to be determined by the Syariah Court which alone has the exclusive jurisdiction, then only the issue of the alleged conversion in 1989 could appropriately be determined by the civil courts". It is thus clear that the Federal Court's decision is one on jurisdictional issue.

[35] Unlike the plaintiff in *Hj Raimi* case, *supra*, the applicant herein did not challenge the validity and legality of his conversion in 1988. There is no doubt that his mother had converted together with her children, including the applicant. Having become a major, the applicant had, in exercising his right of freedom of religion, decided on Christianity as a religion of his choice and he is coming to court to seek a declaration that he is a Christian. This raises the constitutional issue as opposed to jurisdiction issue.

[36] The freedom of religion is enshrine in art. 11(1) of the Constitution thus:

> 11 (1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.
>
> (4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Federal Law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

[37] The constitutional freedom of religion is the most inalienable and sacred of all human rights, and the founding fathers of Malaysia and the Reid Commission (comprising of constitutional and administrative experts from UK, Australia, India and West Pakistan) in their wisdom and integrity saw it fit to honour that right by having this right enshrined in the Constitution.

[38] The freedom of religion gives individuals the liberty to worship their Creator in the way they think and are more agreeable with. In order to give life and meaning to "constitutional freedom of religion", the exercise of that freedom should not be impeded by subjecting the applicant to the decision of a Syariah Court. He does not need a Syariah Court Order to release him from Islam religion because the right to choose his religion lies with the applicant himself and not the religious body. The rights to religious freedom are the natural rights of mankind and thus, only the applicant alone can exercise that right. In other words, the exercise of constitutional religious freedom is out of bound/jurisdiction of a Syariah Court and the applicant can approach the civil court for a declaration that he is a Christian.

[39] Article 74(2) of the Federal Constitution gives power to the Legislature of a State to make laws in respect of any of the matter enumerated in the State List, or, the Second List set out in the Ninth Schedule or the Concurrent List.

[40] Item 1 of List II of the Ninth Schedule states:

> 1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law **of persons professing the religion of Islam**, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, **which shall have jurisdiction only over persons professing the religion of Islam** and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom. (emphasis added)

[41] Given that the Syariah Court shall have jurisdiction only over persons **professing** the religion of Islam, it is therefore helpful at this juncture to ascertain the meaning of "professing" or "profess". (emphasis added)

[42] In *Words And Phrases Judicially Defined*, 1990 edn, p. 447, under the word "profess", it is stated:

> Now what is the meaning to be attached to the word "profess"? According to the *Shorter Oxford English Dictionary* "profess" means "to affirm, or declare one's faith in or allegiance to (a religion, principle, God or Saints etc)" *Re Mohamed Said Nabi, deceased* [1965] 1 MLJ 121 @ 122 per Chua J.

[43] *Longman Dictionary of Contemporary English* defined "profess" as "a statement of your belief, opinion, or feeling".

[44] From the definition aforesaid, it conveys the meaning that to profess a religion is making a public statement about the religion you believe in. Thus, a person professing the religion of Islam is a person who has made a public declaration, affirmed his faith in or his allegiance to Islam.

[45] It is a fact that the Islam religion was chosen and decided for the applicant (a minor) by his mother when she converted to be a Muslim; his conversion was not by reason that he professed the religion of Islam. To put it in another way, the conversion of the applicant to Muslim faith was not on his own volition by affirming, declaring his faith in or allegiance to Islam religion but by virtue of his mother's conversion when he was a minor aged ten years old and his mother has determined his religion. In my view, since the applicant, who is a Bidayuh by birth, had not in the first place professed his faith in Islam but his conversion followed that of his mother as he was a minor at the material time, logic dictates that he cannot be considered as a person professing that particular faith. That the applicant has not lived like a person professing Islam is seen in his averment that he was raised and brought up in the Bidayuh Christian community.

[46] In my view, by reason that the applicant's conversion in the first place was not based on his professing Islam but by virtue of his mother's conversion and by his mother's choice for him, now that the applicant is a major, he is at liberty not only to exercise his constitutional religious right to choose his religion, he can come to this court to enforce his choice to be reflected in his identity card ie, his name and religion.

[47] In the light of the above the third respondent has not acted fairly towards the applicant by insisting on a letter of release from Islam and a court order to effect the amendments applied for by the applicant.

[48] For the reasons aforesaid, I allow the judicial review and make the following declarations:

(a) that the applicant is a Christian;

(b) that the third respondent do change the applicant's name from Azmi b Mohamad Azam Shah @ Roneey to Roneey anak Rebit;

(c) that the third respondent do drop the applicant's religion Islam in his identity card and/or the records and/or particulars of the applicant's religion held at the National Registry to that of Christian; and

(d) costs of RM5,000.